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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **CS(OS) 539/2015**

SONIA SYAL ..... Plaintiff
Through: Mr Pawan Madan, Advocate.

versus

BIRLA SUN LIFE ASSET MANAGEMENT CO LTD ..... Defendant
Through: Mr. Amit Bansal, Mr. Diwakar Maheshwari & Mr. Karun Mehta, Advocates.

CORAM: JUSTICE S.MURALIDHAR

O R D E R

% **16.09.2016**

IA No.19312/2015 (under Order VII Rule 11 CPC)

1. This is a suit filed by Ms. Sonia Syal against Birla Sun Life Asset Management Company Limited seeking recovery of Rs.6,19,19,220.38.

2. The case of the Plaintiff is that the Defendant had sold 40,00,000 units of Birla Sun Life FTP-Series BC-Institutional Growth for a sum of Rs.4,00,00,000/- to the Plaintiff under Folio No.1014751206 ('First Investment Scheme') and 9,77,995.110 units of Birla Sun Life Equity Linked FMP-Series D-Growth on 7th October, 2008 for a sum of Rs.1,00,00,000/- under Folio No.1014789355 ('Second Investment Scheme').

3. It is stated that thereafter on 7th October, 2014, the Plaintiff made a

request for redemption to the Defendant to redeem the above units and this was followed by two legal notices dated 18th November, 2014. By a reply dated 15th December 2014, the Defendant informed the Plaintiff that 8,88,683.504 units of the Birla Sun Life MIP Monthly Dividend were allotted on switch over from Birla Sun Life FTP-Series BC-Institutional Growth on 24th September 2009 for a sum of Rs.1,00,00,000.

4. In a further reply of the same date, the Plaintiff informed the Defendant of the sale of 9,77,995.110 units of Birla Sun Life Equity Linked FMP-Series D-Growth on 7th October, 2008 for a sum of Rs.1,00,00,000/- to the Plaintiff. According to the Plaintiff, on the photocopies of the redemption request stated to have been received by the Defendant on 4th May 2009, 3rd January 2011 and 11th July 2011, the Plaintiff's signatures were forged and she further claims never to have made such a request. The switch over to the MIP Monthly Dividend on 24th September 2009 was also claimed to be without her knowledge.

5. It must be noted that the case of the Defendant as stated in this application under Order VII Rule 11 CPC is that on receipt of redemption requests from the Plaintiff, the amounts were redeemed and the manner of redemption has been set out in detailed in a tabular form in para 5 (c) of the written statement. It is submitted that the two investment schemes have a fixed maturity period and were to mature on 24th September 2009 and 7th October 2011. On the maturity dates, the units were automatically redeemed and the amount credited to the Plaintiff's bank account. According to the Defendant the redemption requests were received from Standard Chartered Bank, which was Plaintiff's distributor. Its stated that

the redemption amounts have been duly credited to the account of the Plaintiff. It is also averred that the statement of account was sent to the Plaintiff through local courier, in respect of the above redemptions. It is accordingly contended that there is no cause of action for the suit as far as the Defendant is concerned. This is apart from the fact that the suit is itself barred by limitation since the transactions concluded some time in 2011 whereas the present suit has been filed in the year 2015.

6. On the previous date, i.e., 7th April, 2015, this Court passed the following order:

> "**<u>IA. No. 19312/2015</u>**
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> Despite opportunity, reply has not been filed. The plaintiff is directed to place on record the bank statement of her account No.SB52310438833 with the Standard Chartered Bank, B-68, Greater Kailash-I, Delhi, for the period between 01.01.2008 to 31.12.2011. The same be filed along with an affidavit positively within four weeks, failing which the Court shall draw adverse inference against the plaintiff.
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> Adjourned to 16.09.2016."

7. Pursuant to the said order, the Plaintiff filed an affidavit affirmed on 3rd September, 2016 where *inter alia*, it is again reiterated that the Plaintiff did not receive any statement from the bank as regards her account till the year 2015. She claimed not to have checked her bank account with the Standard Chartered Bank. It is maintained that the Defendant has acted on the forged requests causing loss to the Plaintiff. The statements annexed to the affidavit pertained to the period June and July, 2007 and not the period for which the Plaintiff was supposed to file the statements, i.e., 1st January, 2008 to 31st December, 2011.

8. As a result, the averments made in the application under Order VII Rule 11 CPC have not been countered effectively by the Plaintiff.

9. On its part the Defendant has placed on record the e-mail exchanged by the Defendant with the Standard Chartered Bank on 23rd July, 2015. This is in the form of a confirmation by the Bank having credited the Plaintiff's account with the redemption amounts as under:

Date of Redemption	**Amount**	**CREDIT STATUS**
12.12.2008	2,00,00,000	Transaction was successfully processed on 15.12.2008. No rejection
04.05.2009	43,00,000	Transaction was successfully processed on 05.05.2009. No rejection
24.09.2009	78,62,742.61	Transaction was successfully processed on 25.09.2009. No rejection
11.07.2011	1,00,90,201.37	Transaction was successfully processed on 12.07.2011. No rejection
10.01.2011	1,24,10,953.54	Transaction was successfully processed on 10.01.2011. No rejection

10. The Court is satisfied that the plaint fails to disclose any valid subsisting cause of action against the Defendant and that the plaint is liable to be rejected on that score. Given the dates of the transactions in question, which again have not been rebutted by the Plaintiff, the suit is also barred by limitation.

11. The application is accordingly allowed and the plaint is rejected. This, however, will not preclude the Plaintiff from pursuing any other legal

remedy she may have in accordance with law.

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12. In view of the order in IA No. 19312/2015, the suit is dismissed.

SEPTEMBER 16, 2016 **S. MURALIDHAR, J.**

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